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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,939

Applicant(s)

SCHWAGER, MICHAEL

Examiner

Charles A. Marmor, II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the Preliminary Amendment filed March 7, 2002.

The Examiner acknowledges the amendments to the specification; the amendments to claims 1-15; and the cancellation of claims 16-18. The remarks accompanying said Preliminary Amendment indicate that upon entry of the amendment claims 12-23, 25-43 and 45-48 are pending. However, only claims 1-18 were filed in the instant Application. In view of the foregoing, claims 1-15 are pending.

Drawings

2. Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it uses legal phraseology, i.e. "said" at lines 3 and 4. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because the preferred embodiment of the invention disclosed in the detailed description contradicts the disclosure of the summary of the invention and of claim 3. Particularly, page 6, lines 13-16 of the detailed description recite that the radius of curvature of the first bent section is larger than the radius of curvature of the second bent section. Whereas, page 3, lines 1 and 2 of the Summary of the Invention and Claim 3 recite that the radius of curvature of the first bent section is smaller than the radius of curvature of the second bent section. Appropriate correction is required.

Claim Objections

6. Claim 9 is objected to because of the following informalities: in line 2, "shaped" apparently should read --shape--. Appropriate correction is required.

7. Claim 12 is objected to because of the following informalities: in line 2, "its distal end" apparently should read --a distal end thereof--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims 6-8 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 6 and 7, the claims are indefinite because it is unclear how "straight" sections can *include* angles.

Claim 15 recites the limitation "said distal end" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no distal end recited in claims 1 or 15 prior to this recitation. In line 2, "said distal end" apparently should read --a distal end--.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Weinstock et al. ('276). Weinstock et al. teach a guiding aid **64,64',64**" including a flexible shapeable shaft having a straight distal end section, a first bent section, an intermediate straight section, a second bent section and a proximal straight section (Figs. 6-6B, col. 9, lines 8-65). The bent sections have the same sign of curvature and are located substantially in the same plane, having a substantially circular arc. The radius of the curvature of the first bent section is smaller than the radius of the curvature of the second bent section. The straight end section and the straight intermediate section form a first obtuse angle, and the straight intermediate section and an axis of

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the guiding aid form a second obtuse angle. The obtuse angles are between 135° and 150°. The shaft 61 is tapered toward its distal end. A helically wound spring 65 is disposed about the shaft and includes rounded terminal elements 67,69.

12. Claims 1-10 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg et al. ('873). Berg et al. teach a guiding aid including a flexible shapeable shaft having a straight distal end section, a first bent section, an intermediate straight section, a second bent section and a proximal straight section (Figs. 2B-2C). The bent sections have the same sign of curvature and are located substantially in the same plane having a substantially circular arc. The radius of the curvature of the first bent section is smaller than the radius of the curvature of the second bent section. The straight end section and the straight section form a first obtuse angle and the straight intermediate section and an axis of the guiding aid form a second obtuse angle. The obtuse angles are between 135° and 150°. The shaft is tapered toward its distal end (Fig. 1B). The shaft is made of a material having superelastic characteristics, particularly Nitinol, and is further provided with radiopaque means (col. 6, lines 21-32).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hassett ('018), Hassett et al. ('084), Swartz et al. ('289) and Lurie et al. ('231) teach guiding aids that include shafts having a plurality of bent sections.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (703) 305-3521. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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December 4, 2003